

1984 WL 249696 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 31, 1984

***1 RE: Opinion Request #977, Re: Fire Marshall**

Norman W. Stevenson, Esquire
Barnwell & Stevenson
21 Broad Street
Post Office Box 1429
Charleston, South Carolina 29401

Dear Mr. Stevenson:

Attorney General Medlock has referred your letter, dated May 4, 1984, to me for investigation and reply.

Your question concerned the following situation. The St. John's Fire District employs a fire marshall who, among other duties, investigates arson or fires of suspicious nature. That individual feels he needs the powers vested in a constable, appointed in accordance with [§ 23-1-60 of the South Carolina Code](#) of Laws. The question is whether or not that constable, who is not compensated by the state, would have to comply with the requirements of § 23-23-40, which establishes minimum training requirements, such as those given at the Criminal Justice Academy in Columbia.

A comparison of the governing statutes shows distinguishing factors that would exempt your fire marshall from the requirements of § 23-23-40. Assuming he is a constable appointed under the provisions of [§ 23-1-60](#), the appointing authority is the Governor, and that statute also requires that he has to furnish knowledge to the Governor of duties of a law enforcement officer, or go through the training required by SLED. Section 23-23-40 discusses training requirements for law enforcement officers appointed or employed by any public law enforcement agency. It proscribes law enforcement activity by such appointees or employees who have not gone through the required training at the Academy, or its equivalent, and who have been appointed or employed after January 1, 1972.

Absent any authority equating the Governor to a public law enforcement agency, it would appear that the educational requirements contained in § 23-23-40 are not applicable to a constable, such as your fire marshall. The difference, therefore, is the appointing authority. In addition, the Training Article, §§ 23-23-10 et seq., generally applies to 'law enforcement officers' as they are defined in § 23-23-10(D)(1). That subsection defines law enforcement officers as:

An appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

A constable, not compensated by the State, is not regularly salaried or on the payroll of a law enforcement agency, and is therefore not subject to the provisions of the Training Article.

Accordingly, given these distinctions, it would be the opinion of this office that your fire marshall, who is also a constable, would not come under the training requirements of § 23-23-40. This conclusion is consistent with prior opinions issued by counsel at the Criminal Justice Academy. Moreover, it is in accord with a previous opinion of this office. See, Op. Atty. Gen., January 28, 1975. The fact that the General Assembly has not seen fit to modify the law in the nine years since the Attorney

General's opinion was issued strongly suggests that the opinion was consistent with legislative intent. See, [Scheff v. Township of Maple Shade](#), 149 N.J. Super. 448, 274 A.2d 43 (1977).

*2 I trust this information answers your inquiry. In accordance with the limitations of the question presented, please be advised that I have not addressed the issue of whether or not a fire marshall employed by the St. John's Fire District can also have a State Constable commission without violating the dual officeholding provisions of the South Carolina Constitution.

Sincerely yours,

James G. Bogle
Assistant Attorney General

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